



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

MINUTES STATE WATER CONTROL BOARD

September 25, 2007
House Room C
General Assembly Building
9th & Broad Streets
Richmond, Virginia

Board Members Present:

W. Shelton Miles, III, Chair
R. Michael McKenney
W. Jack Kiser
Robert H. Wayland, III

Komal K. Jain Vice-Chair (left at 2:30 p.m.)
Thomas D. C. Walker
John B. Thompson

Staff Present:

David K. Paylor, Director
Department of Environmental Quality

Cindy M. Berndt
Department of Environmental Quality

Attorney General's Office:

Alfred B. Albiston, Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened at 9:35 a.m. on September 25, 2007, recessed at 1:05 p.m., reconvened at 1:55 p.m. and adjourned at 3:50 p.m.

Approved Minutes #1
Dec. 4 2007



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 25, 2007

MINUTE NO. 1 – Minutes

The Board approved the minutes from the meetings on June 27 and July 30, 2007.


Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF September 25, 2007

MINUTE NO. 2 - Final Regulations: Amendments to the VPDES Permit Program Regulation to Conform To State Statute Changes Regarding Landfills

Prior to the meeting the Board was provided with an amendment to the VPDES Permit Regulation (9 VAC 25-31) that requires VPDES permit applications for new municipal solid waste landfills that discharge stormwater into a local watershed protection district that was established and designated as such by city ordinance prior to January 1, 2006, to contain a certification from the local governing body that the discharge is consistent with the city's ordinance that established and designated the local watershed protection district in order for the application to be considered complete. Burton Tuxford gave the staff presentation and requested that the Board adopt the amendment to the regulation.

Board Decision

Based on the briefing material and the staff presentation the Board voted unanimously to adopt the amendment to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9 VAC 25-31).

A handwritten signature in cursive script, reading "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.

Director, Division of Water Quality Programs



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MINUTE NO. 3 – §§ 9 VAC 25-31-100.Q and 165.A and C Virginia Pollutant Discharge Elimination System Regulation (Clean Water Act 316(b) Cooling Water Intake Requirements

Elleanore Daub from the Office of Water Permit Programs asked the Board to adopt, as a final exempt action, amendments to the Permit Regulation §§ 9 VAC 25-31-100.Q and 165.A and C. These amendments relate to Clean Water Act 316(b) requirements for the reduction of impingement mortality and entrainment of fish and shellfish for cooling water intake structures at Phase II facilities. Phase II facilities are existing power utilities facilities that use a cooling water intake structure to withdraw cooling water from waters of the state at a rate of 50 million gallons per day (MGD) or greater. The 316(b) amendments are primarily deletions and reflect the sections of the federal permit regulation that were suspended and include what remains of the existing federal requirements related to 316(b).

Board Decision:

The Board voted unanimously to adopt the amendments to §§ 9 VAC 25-31-100.Q and 165.A and C.

A handwritten signature in cursive script, reading "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.

Director, Division of Water Quality Programs



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF September 25, 2007

MINUTE NO. 4 - Regulations – Final Exempt: Biosolids Regulation Amendments

Prior to the meeting, the Board was provided with proposed amendments to the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32-10 et seq.), the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31-10 et seq.), the Sewage Collection and Treatment (SCAT) Regulations (9VAC25-790-10 et seq.), and the Fees for Permits and Certificates (Fee) regulation (9VAC25-20-10 et seq.).

These amendments were made as a result of changes made in 2007 to the Code of Virginia, specifically HB 2802 and SB 1339 that amended §62.1-44.19:3 and repealed §§32.1-164.2 through 32.1-164.7 of the Code of Virginia; SB 1313 and SB 1300 that amended §62.1-44.19:3 of the Code of Virginia; and also HB 2197, HB 2624, HB2805 from the 2005 Acts of Assembly that amended §62.1-44.19:3 of the Code of Virginia.

Neil Zahradka gave the staff presentation and recommendation. The Board was requested to adopt proposed amendments to the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32-10 et seq.), the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31-10 et seq.), the Sewage Collection and Treatment (SCAT) Regulations (9VAC25-790-10 et seq.), and the Fees for Permits and Certificates (Fee) regulation (9VAC25-20-10 et seq.).

Board Decision

Based on the briefing materials and the staff presentation, the Board voted unanimously to accept the staff recommendation to promulgate the proposed amendments to the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32-10 et seq.), the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31-10 et seq.), the Sewage Collection and Treatment (SCAT) Regulations (9VAC25-790-10 et seq.), and the Fees for Permits and Certificates (Fee) regulation (9VAC25-20-10 et seq.).

A handwritten signature in cursive script, reading "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.

Director, Division of Water Quality Programs



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MINUTE NO. 5 – 9 VAC 25-193 General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities - Proposed

This proposed regulation is for the reissuance of the general permit for concrete products facilities. The current general permit will expire on September 30, 2008. Elleanore Daub from the Office of Water Permit Programs presented to the Board proposed amendments to this general permit for concrete products facilities. The proposed amendments include revised special conditions related to solids deposition, freeboard and liner requirements for basins and discharge monitoring reporting requirements at two significant digits.

Board Decision:

The Board voted unanimously to authorize public hearings for the proposed amendments to 9 VAC 25-193.

A handwritten signature in cursive script, reading "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.

Director, Division of Water Quality Programs



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 25, 2007

MINUTE NO. 6 – Wintergreen Stoney Creek STP – Nelson County

Keith Fowler, VRO Water Permits Manager, made the staff presentation regarding the proposed reissuance of VPDES Permit No. VA0074047, for the operation of the Wintergreen Stoney Creek STP. This matter was presented to the Board due to controversy surrounding the proposed permit action and the decision to hold a public hearing on July 26, 2007.

Mr. Fowler provided a brief background, then referred to the materials in the Board books for a detailed summary of the comments that were received prior to and during the public hearing, and through the close of the hearing record, as well as the staff's responses to those comments.

Following Mr. Fowler's presentation, Mr. Don Hearl, the permittee's engineering consultant, provided comments supporting the reissuance of the permit. Mr. Fowler and Mr. Hearl responded to questions raised by the Board.

Upon request from the Board, Mr. Fowler provided the staff recommendation that the Board authorize the reissuance of VPDES Permit No. VA0074047, as drafted.

Board Decision

By unanimous consensus, the Board voted to authorize the reissuance of VPDES Permit No. VA0074047.

A handwritten signature in black ink, reading "Amy Thatcher Owens".

Amy Thatcher Owens
Regional Director
Valley Regional Office



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MINUTE NO 7. – Virginia Water Protection Permit Number 05-0852, Cumberland County's Cobbs Creek Reservoir

Terry Wagner, Water Resource Division Director, presented a brief overview of the proposed reservoir project and a summary of public comments received subsequent to an August 28, 2007 public hearing and staff responses to those comments. Representatives of Cumberland, Powhatan and Henrico counties spoke in favor of the proposal. Seven landowners whose properties will be impacted by the construction of the reservoir spoke in opposition to the proposal. A representative of the City of Richmond, while not opposing the proposal, cautioned that any future authorization to capture water released by the project that would impact the city's existing water rights would be opposed.

Mr. Wagner recommended that the Board issue the subject permit as drafted with three amendments to address public comments. The amendments added a special condition that requires releases from the project during low flow periods prior to the time when downstream water demands materialize, allow existing structures within the buffer associated with the reservoir, and require the permittee to seek public input in the development of a vegetation management plan for the buffer.

After expressing concern about the adequacy of the mitigation for project impacts, Mr. Wayland offered an amendment to the staff recommendation that would require that the final mitigation plan for wetland and stream impacts be submitted to the Board for final approval. The Board voted six to one in favor of Mr. Wayland's amendment (Mr. Kiser abstained.)

The Board voted six to one in favor of the staff recommendation as amended (Mr. Kiser voted no).



Terry D. Wagner, Director
Division of Water Resources



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 25, 2007

MINUTE NO. 8 – Consent Special Order for Omega Protein, Inc.

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Order for Omega Protein, Inc. for approval. Ms. O'Connell indicated that the penalty assessed by the Order had been increased, as per the Board's instruction, at its last quarterly meeting.

The Board unanimously approved the Order and further authorized the Department's Director, or his designee, to execute the Order on the Board's behalf and to refer violations of the Order to the Office of the Attorney General for appropriate legal action.

A handwritten signature in black ink, reading "Kathleen F. O'Connell".

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 25, 2007

MINUTE NO. 9 – Report on Facilities in Significant Noncompliance

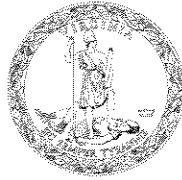
Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Report on Facilities in Significant Noncompliance for the quarter ending March 31, 2007. The facility, its owner, and the reported instances of noncompliance were:

1. Town of Lawrenceville, Lawrenceville Wastewater Treatment Facility – Failure to meet Total Suspended Solids effluent limits. (Violations have been resolved, no enforcement action contemplated.)

The Board accepted the report.



Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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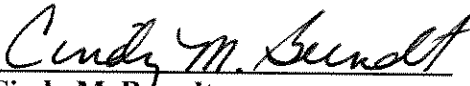
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MINUTE NO. 10 – Penalty Matrix Report

The Board received a report on the enforcement penalty matrix from Michael Dowd and John E. Ely.


Cindy M. Berndt



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MINUTE NO. 11 - Consent Special Orders

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Orders for:

Bristow Manor Limited Partnership
Aqua Lake Holiday Utilities, Inc.
Town of South Boston
Aqua Utilities, Inc.
Smith-Midland, Inc.
Spottsylvania County
B&J Enterprises, L.C.
Bassett Mirror Company, Inc.
Turman Sawmill, Inc.
Henrico County
Powhatan County, Dutoy Creek Wastewater Treatment Plant
J.E. Liesfeld, Jr.
Orange Partners, LLC
Lexington Golf and Country Club, Inc.
F. L. Hatcher and Son, Inc.
Huff Petroleum Co., Inc., et al

The Board unanimously approved the Orders and further authorized the Department's Director, or his designee, to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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MINUTE NO. 12 - Consent Special Order for Bowman Apple Products, Inc.

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Order for Bowman Apple Products, Inc. for approval. Ms. O'Connell reviewed public comment that had been received regarding the order and staff responses to that comment.

The Board unanimously approved the Order and further authorized the Department's Director, or his designee, to execute the Order on the Board's behalf and to refer violations of the Order to the Office of the Attorney General for appropriate legal action.

A handwritten signature in black ink, reading "Kathleen F. O'Connell".

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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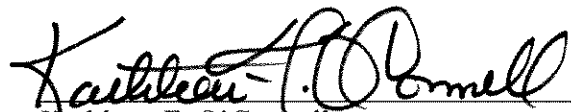
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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 25, 2007

MINUTE NO. 13 - Consent Special Order for Hampton Roads Sanitation District, et al

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Order for the Hampton Roads Sanitation District; the cities of Chesapeake, Hampton, Newport News, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg; the counties of Gloucester, Isle of Wight and York; the James City Service Authority; and the town of Smithfield, for approval. Ms. O'Connell reviewed public comment that had been received regarding the order and staff responses to that comment.

The Board unanimously approved the Order and further authorized the Department's Director, or his designee, to execute the Order on the Board's behalf and to refer violations of the Order to the Office of the Attorney General for appropriate legal action.


Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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EXCERPT FROM THE PROCEEDINGS OF THE BOARD AT ITS MEETING ON SEPTEMBER 25, 2007

MINUTE 14- Development of Virginia's FY 2008 Clean Water Revolving Loan Funding List

Mr. Walter Gills, Program Director of the Department's Construction Assistance Program, made a presentation to the Board based on a staff memorandum dated August 30, 2007 pertaining to the development of Virginia's Clean Water Revolving Loan Project Priority List and the Intended Use Plan for FY 2008.

Mr. Gills began by referencing the attachments included with the staff's memorandum providing the Board with a description of the projects being considered and presenting the FY 2008 applicants in priority funding order. The 2008 application pool was very large at \$430 million. He noted that there would be approximately \$90 million in base funds available and that there had been several detailed discussions with the Virginia Resources Authority about leveraging those funds in the bond market to create additional capacity to fund projects up to the \$225 million range.


Mr. Gills summarized the staff's activities in regards to the review of the applications, including an evaluation of the project schedules in order to achieve the greatest water quality benefits with available resources. He noted that three of the loan requests were not ready to proceed until 2009 and could be deferred to a later funding cycle and that two applications had been withdrawn. Mr. Gills also pointed out that seven projects could be phased funded and that the bottom four projects on the ranking list provided minimal direct water quality benefit and were not being recommended for funding. He stated that, through a leveraged loan program, the Board would have sufficient revenue available to fund the \$223.2 million for requests that provide direct water quality benefits and are ready to proceed.

Following discussions, the Board voted unanimously to:

1. Target the following applicants for loan assistance from available and anticipated funds and authorize the staff to present the Board's proposed FY 2008 loan project priority list for public comment.

1	City of Lynchburg	\$12,350,000
2	Harrisonburg-Rockingham RSA	\$20,000,000
3	Town of Colonial Beach	\$2,970,000
4	City of Richmond	\$13,000,000
5	City of Richmond	\$9,000,000
6	Western Virginia Water Authority	\$1,969,000
7	Alleghany County	\$7,608,595
8	Maury Service Authority	\$6,075,000
9	HRSD/York STP	\$25,000,000
10	Prince William County Service Authority	\$35,000,000
11	Alexandria Sanitation Authority	\$15,000,000
12	Town of Broadway	\$3,433,536
13	Arlington County	\$50,000,000
14	Stafford County/Little Falls Run	\$5,315,755
15	Tazewell County/Baptist Valley	\$8,000,000
16	Town of Big Stone Gap	\$3,051,000
17	Fauquier County	\$1,258,390
18	City of Newport News	\$3,200,000
19	Cafferty/ARC Property	\$1,000,000

FY 2008 VCWRLF Total \$223,232,181


Ellen Gilinsky, Ph.D., Director
Division of Water Quality Programs



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 25, 2007

MINUTE NO. 15 – SIL Clear Water, LLC

The Board received a report from John Butcher of the Attorney General's Office on the SIL Clear Water, LLC enforcement litigation.


Cindy M. Berndt



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MINUTE NO. 16 – Division Director's Report

Ellen Gilinsky gave the Water Quality Division Director's Report. The SWCB was updated on the status of the following issues:

Biosolids:

The Biosolids Expert Panel former under House Joint Resolution 694 held its first meeting on September 18, 2007. They discussed the ways they would meet the goals set out in the resolution, and split into two workgroups on environmental and health issues. Their interim report is due November 30.

The status of DEQ Biosolids Program Development was reported. Interviews for regulation and compliance coordinators held 9/26-9/27; Developing qualifications and job duties for regional positions; NOIRA being drafted to address outstanding questions and give complete review of regulations; TAC will run concurrent with expert panel; Public Outreach has started; Meeting with VDH to discuss Permit workload and Health complaints procedures

Watershed General Permit Compliance Plans:

DEQ has received nearly all of the compliance plans that were due 8/1/07. The plans that have been received provide sufficient evidence that the tributary wide compliance dates of 1/1/11 are achievable. DEQ does not recommend modifying the watershed general permit regulation at this time, but will revisit the schedule of compliance when the first annual compliance plan updates are received in February 2008. Several facilities have waived their schedules of compliance, having accepted responsibility for their load limits as of 1/1/07. These facilities are eligible to generate and trade credits now, and may assist in offsetting new and expanded discharges until other options such as non-point trading become viable. DEQ is working with DCR and EPA to develop non-point trading guidance pertaining to agricultural operations and should have a final version available by year's end; non-point guidance pertaining to developed land should be complete by the summer of 2008.

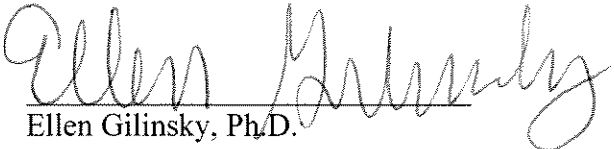
Aquaculture Initiative:

DEQ has begun an effort to protect important shellfish habitat areas and the sustainability of Virginia's aquaculture industry by providing additional protection for these waters on the Eastern Shore. This has included publication of a NOIRA regarding the feasibility of including in the water quality standards regulation a new designation of "Aquaculture Enhancement Zones" with provisions requiring applicants to demonstrate that practicable alternatives to discharging pollutants to the listed waters have been evaluated and that the proposed discharge is the alternative that produces the least environmental impact. The rulemaking will also consider how regulations governing shellfish policy and shellfish public hearing requirements should be amended in order to consolidate water quality protection efforts for shellfish. We have scheduled a public meeting for 2 PM on October 17, 2007 at the Eastern Shore Agricultural Research and Extension Center in Painter, VA. We have also decided to form, after the close of public comment, an advisory committee to assist in development of the proposed regulatory amendments. We are accepting nominations to the TAC as part of the comment period. DEQ has also accepted an invitation from the Planning District Commission to send DEQ staff from the regulatory guidance project team to the October 16 meeting of the PDC subcommittee in Accomack to discuss the aquaculture enhancement zone initiative process. Finally we have undertaken two sets of assessments: an economic net benefit and a regional feasibility analyses with financial help of Coastal Zone Management. In Fall 2007, VA Tech environmental economists initiated an economic net benefit assessment of existing versus other management alternatives to promote Shellfish Aquaculture in VA with specific focus on clams and oysters. Complementing this effort, a VCU graduate student and DEQ policy intern will conduct a regional feasibility analyses across the Eastern Shore, Northern Neck and Middle Peninsula Planning District's to assess the economic, ecological and regulatory aspects of – alternative use options for point source dischargers and infrastructural resource availability- promoting shellfish aquaculture across the districts

Kings Grant Status

DEQ has made an official request for OAG to do review of the issue and have not yet heard back.

No Board Decision is required.


Ellen Gilinsky, Ph.D.
Director, Division of Water Quality



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 25, 2007

MINUTE NO. 17 – Clean Water Act 316(a) Thermal Variances – Briefing

Elleanore Daub from the Office of Water Permit Programs presented to the Board a briefing on Clean Water Act 316(a) thermal variances for heated effluents. The presentation included the history of the variance, a review of the water quality standards for temperature and mixing zones, the requirements of a 316(a) demonstration, the facilities in Virginia with 316(a) variances and renewal requirements.

No Board decision required.

A handwritten signature in cursive script that reads "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.

Director, Division of Water Quality Programs



COMMONWEALTH of VIRGINIA

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Director

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 25, 2007

MINUTE NO. 18 – Future Meetings

The Board confirmed December 4-5, 2007, as the date of their next regular meeting.


Cindy M. Berndt

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